



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20 -720-80 (new section)
Regulation title	Regulations Governing Local School Boards and School Divisions
Action title	Add a section governing fees and charges to the above named regulations
Date this document prepared	August 24, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Board of Education's *Rules Governing Fees and Charges*, 8 VAC 20-370-10, were adopted on or before September 1, 1980 and have not been amended since that time. These regulations are out of date and in need of revision. The purpose of this proposal is to repeal the current regulations governing fees charged by local school divisions and create new provisions that will be added as a section to the proposed *Regulations Governing Local School Boards and School Divisions*, 8 VAC 20-720-10 et seq. when they become final. The current regulations governing fees and charges will be repealed simultaneously with the addition to the *Regulations Governing Local School Boards and School Divisions*.

On May 21, 2008, a petition was filed requesting that the Virginia Board of Education review and revise the regulations to ensure clarity in the implementation of their provisions. The petition required a 21 day public comment period. That public comment period was held from June 23 to July 14, 2008. Forty-five comments were received. The majority of commenters supported revising the regulations, while several requested that the Board eliminate fees. Additionally, one person submitted comments during the NOIRA period along with a petition with 99 signatories supporting those comments. A detailed listing of the NOIRA comments may be found in the section of this document entitled "Public comment." All comments received in response to the petition and the NOIRA have been considered in the development of the new regulatory requirements.

The proposed regulation section will include specific provisions regarding permissible and impermissible fees, policies for families that cannot afford the fees and impermissible actions for the failure to pay the fees.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms or technical terms that are not defined in the definitions section of the *Regulations Governing Local School Boards and School Divisions*.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 22.1-16 of the Code of Virginia provides that "The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." Additionally, § 22.1-6 of the Code of Virginia, limits the fees that may be charged to those that are permitted by state law or Board of Education regulations.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The purpose of this proposal is to repeal the current regulations governing fees charged by local school divisions and create new better defined and updated provisions that will be added as a section to the proposed *Regulations Governing Local School Boards and School Divisions*, 8 VAC 20-720-10 et seq. once they become final. The current regulations governing fees and charges will be repealed simultaneously with the adoption of the addition to the *Regulations Governing Local School Boards and School Divisions*.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed regulations section provides changes to school board policies and procedures and includes specific provisions regarding permissible and impermissible fees, policies for families that cannot afford the fees and impermissible actions for the failure to pay the fees.

The following changes related to policy are proposed:

- Local school boards that charge fees would be required to have a policy and a fee schedule that would be provided to parents annually and posted on the school division's Web site.
- The policy would include a provision to waive or reduce fees for economically disadvantaged students and students whose families are undergoing economic hardships.
- The policy and fee schedule would be required to be consistent across the school division.
- No fees could be charged that had not been approved by the local school division.

The following changes related to fees and charges are proposed:

- Fees may not be charged as a condition of school enrollment unless the student is not of school age or does not live within the jurisdiction (§§ 22.1-1, 22.1-3, and 22.1-5, *Code of Virginia*).
- Fees may not be charged for textbooks or textbook deposits; however, § 22.1-143, *Code of Virginia*, permits local school divisions to assess a reasonable fee for lost or damaged textbooks.
- Fees may not be charged for pupil transportation to and from school (Attorney General's Opinion dated August 29, 2007), but may be charged for the student's pro rata cost of providing for voluntary extracurricular activities (§ 22.1-176, *Code of Virginia*).
- Fees may be charged for summer school unless the summer school program is a remediation program required by the Standards of Quality (§ 22.1-253.13:1, *Code of Virginia*).
- Fees may be charged for class dues; however, class dues shall not be mandatory, and the school board must specify the kinds of programs and activities covered by class dues;
- Fees may not be charged for nonmandatory services such as parking fees and locker fees (Attorney General's Opinions dated November 8, 1991 and 1964-65 Att'y Gen. Ann. Rep. 294).
- Fees may be charged for consumable materials, such as workbooks, but the local school board must have a policy to ensure that these are furnished at a reduced price or free of charge to students who are unable to afford them (§ 22.1-243, *Code of Virginia*).
- Fees may be charged for the behind the wheel portion of the driver's education program (§ 22.1-205, *Code of Virginia*).
- Fees may be charged for the preparation and distribution of official paper copies of the student's transcript, provided that the school board first provides a reasonable number of copies for free. Official electronic copies of transcripts shall be provided at no cost.

The following additional provision related to nonpayment of fees is proposed:

- A student may not be suspended or expelled for nonpayment of fees and charges.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

While the Code of Virginia does not specifically require these regulations, it does limit the fees that may be charged to those that are permitted by state law or Board of Education regulations. Therefore, the Board of Education must adopt regulations in order to properly address the issue of what fees may or may not be charged by local school divisions. This proposal updates and clarifies an outdated regulation to provide better guidance to local school divisions and incorporates Attorney General's Opinions and changes to the Code of Virginia.

The proposed regulations section provides changes to school board policies and procedures and includes specific provisions regarding permissible and impermissible fees, policies for families that cannot afford the fees and permissible actions for the failure to pay the fees.

The following changes related to policy are proposed:

- Local school boards that charge fees would be required to have a policy and a fee schedule that would be provided to parents annually and posted on the school division's Web site.
- The policy would include a provision to waive or reduce fees for economically disadvantaged students and students whose families are undergoing economic hardships.
- The policy and fee schedule would be required to be consistent across the school division.
- No fees could be charged that had not been approved by the local school division.

The following changes related to fees and charges are proposed:

- Fees may not be charged as a condition of school enrollment unless the student is not of school age or does not live within the jurisdiction (§§ 22.1-1, 22.1-3, and 22.1-5, *Code of Virginia*).
- Fees may not be charged for textbooks or textbook deposits; however, § 22.1-143, *Code of Virginia*, permits local school divisions to assess a reasonable fee for lost or damaged textbooks.
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- Fees may be charged for summer school unless the summer school program is a remediation program required by the Standards of Quality (§ 22.1-253.13:1, *Code of Virginia*).
- Fees may be charged for class dues; however, class dues shall not be mandatory, and the school board must specify the kinds of programs and activities covered by class dues;

- Fees may not be charged for nonmandatory services such as parking fees and locker fees (Attorney General’s Opinions dated November 8, 1991 and 1964-65 Att’y Gen. Ann. Rep. 294).
- Fees may be charged for consumable materials, such as workbooks, but the local school board must have a policy to ensure that these are furnished at a reduced price or free of charge to students who are unable to afford them (§ 22.1-243, *Code of Virginia*).
- Fees may be charged for the behind the wheel portion of the driver’s education program (§ 22.1-205, *Code of Virginia*).
- Fees may be charged for the preparation and distribution of official paper copies of the student’s transcript, provided that the school board first provides a reasonable number of copies for free. Official electronic copies of transcripts shall be provided at no cost.

The following additional provision related to nonpayment of fees is proposed:

- A student may not be suspended or expelled for nonpayment of fees and charges.

Some parents and members of the public have, over the years, believed that school divisions were not making provisions for low-income and disadvantaged families. This proposal is advantageous to students and their families who will have access to necessary information regarding fees and charges and who will be assured that fees charges by local school divisions are in accordance with state law and regulations. Additionally, the regulation will clarify that children from families that are economically disadvantaged will not be denied opportunities based on their inability to pay the imposed fees. There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal laws and regulations governing fees and charges in local school divisions.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

It is anticipated that the proposed regulation will have a minimal fiscal and administrative impact on local school divisions. No school division will bear a disproportionate material impact unless it is currently charging fees that would be impermissible under the proposed regulations section.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to the Division for Policy and Communications, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, (804) 225-2043; (804) 786-5389, Policy@doe.virginia.gov.

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures	It is anticipated that there will be minimal fiscal and administrative impact to the state.
Projected cost of the new regulations or changes to existing regulations on localities	It is anticipated that the proposed regulation will have a minimal fiscal and administrative impact on local school divisions. No school division will bear a disproportionate material impact unless it is currently charging fees that would be impermissible under the proposed regulatory section.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations	Local school boards and school divisions and parents of students who attend Virginia’s public schools who pay the fees governed by this regulation section.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 132 local school divisions and over one million students in Virginia’s public schools whose parents may be affected by the proposed regulation section. It is anticipated that no small businesses will be affected.
All projected costs of the new regulations or changes to existing regulations for affected	Small businesses will not be required to comply with this proposed regulation section; therefore,

<p>individuals, businesses, or other entities. Please be specific and do include costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the new proposed regulatory changes or new regulations.</p>	<p>there will be no cost to them. For school divisions that have to develop a policy, or revise their policy, there will be minimal administrative impact.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>It is anticipated that the new regulatory requirements will benefit all parents, especially those who are economically disadvantaged.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Board of Education is required under the Administrative Process Act to revise the *Rules Governing Fees and Charges* as a result of a petition that was filed on May 21, 2008 requesting that the Virginia Board of Education review and revise the regulations to ensure clarity in the implementation of their provisions. Additionally, there have been changes in the *Code of Virginia* that necessitate changes to the existing regulations.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods as the *Code of Virginia* only permits local school divisions to charge fees that have been approved by the Board of Education or required by the Code. There will be no impact on small business because the regulations apply only to local school boards and school divisions. Therefore, none of the requirements apply to small businesses.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Board of Education, at its May 21, 2008 meeting, received public comments regarding fees that are charged to students in Virginia’s public schools. In response to the comments received, the Board requested that the Superintendent of Public Instruction provide additional information at the June 2008 meeting of the Board. In response to this request, Department of Education staff conducted a survey of all Virginia school divisions regarding their student fees and charges. On May 30, 2008, the Superintendent of Public Instruction sent an e-mail to all school divisions requesting that they complete the questionnaire by June 6, 2008. Eighty-three school divisions responded. A report analyzing the responses was prepared and submitted to the Board of Education at its June 19, 2008 meeting. One of the recommendations of the report was to revise the *Rules Governing Fees and Charges*, 8 VAC 20-370-10.

This regulatory proposal responds to that recommendation and incorporates information provided by the survey, an overview of current Virginia Constitution, Virginia Code and Board of Education requirements, summaries of relevant Attorney General’s opinions and two Superintendent’s Memoranda.

Additionally, public comment was received in response to a petition that was filed on May 21, 2008 requesting that the Virginia Board of Education review and revise the regulations to ensure clarity in the implementation of their provisions. The petition required a 21-day public comment period which yielded forty-five comments. The majority of commenters supported revising the regulations, while several requested that the Board eliminate fees. Additionally, one person submitted comments during the NOIRA period along with a petition with 99 signatories supporting those comments. A detailed listing of the NOIRA comments may be found in the section of this document entitled “Public comment.” All comments received in response to the petition and the NOIRA have also been considered in the development of the new regulatory requirements.

Commenter	Comment	Agency response
<p>Angela Ciolfi JustChildren</p>	<p>Requested that the Board of Education consider several guiding principles:</p> <ul style="list-style-type: none"> • Eliminate all mandatory fees and charges, including fees for materials or activities that are necessary for the child to benefit from instruction in any graded class; • Require the local school board to approve any remaining fees each year; • Make all students who are eligible for free and reduced price lunch or who are receiving any form of public assistance automatically eligible for waivers of any remaining fees; • Require all schools to provide clear written notice to parents of the availability of waivers and the process for applying for them at the beginning of the school year and any time a fee is imposed; • Consider assembling an 	<p>Most of the changes requested by JustChildren were incorporated into the draft regulations. It was impossible, however, to eliminate all mandatory fees without creating a major fiscal impact on school divisions. Additionally, some of the fees are expressly permissible under state law or have been approved through Attorney General’s opinions.</p> <p>A group was not assembled to assist with the revision process. All interested parties will have the opportunity to participate in the process through public comments.</p>

	<p>advisory group of school administrators, teachers, and parents, including low income parents, to assist with the revision process. The charge of the group should be to make recommendations that anticipate and aim to prevent any unintended consequences of these policy changes.</p>	
<p>Petition 99 signatures in support. Note- However, three individuals were listed twice as petition signers and one of the signatories also submitted individual written comments on behalf of JustChildren</p>	<p>99 signatures were provided on a petition to support the comments of JustChildren requesting that the Board:</p> <ul style="list-style-type: none"> • Eliminate all mandatory fees and charges, including fees for materials or activities that are necessary for the child to benefit from instruction in any graded class; • Require the local school board to approve any remaining fees each year; • Make all students who are eligible for free and reduced price lunch or who are receiving any form of public assistance automatically eligible for waivers of any remaining fees; • Require all schools to provide clear written notice to parents of the availability of waivers and the process for applying for them at the beginning of the school year and any time a fee is imposed; • Consider assembling an advisory group of school administrators, teachers, and parents, including low income parents, to assist with the revision process. The charge of the group should be to make recommendations that anticipate and aim to prevent any unintended consequences of these policy changes. 	<p>Most of the changes requested by the petition signatories were incorporated into the draft regulations. It was impossible, however, to eliminate all mandatory fees without creating a major fiscal impact on school divisions. Additionally, some of the fees are expressly permissible under state law or have been approved through Attorney General's opinions.</p> <p>A group was not assembled to assist with the revision process. All interested parties will have the opportunity to participate in the process through public comments.</p>

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is anticipated that the proposed regulation section will have a positive impact on students and their families in that the regulation requires the development of consistent policies and fee schedules throughout the schools in the school division and that the policies and fee schedule are provided to parents so they are knowledgeable about what is required and are assured that the fees are uniform and in compliance with law and regulations.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8VAC 20-370-10	8VAC20-720-80	<p>Prohibits school divisions from imposing any fees or charges unless authorized by the Board of Education and from withholding any pupil's scholastic report card or diploma due to nonpayment of any fee or charge.</p> <p>Lists the following permissible fees: class dues; voluntary student activities; night school classes; postgraduate classes; summer school; rental textbooks; musical instruments used in regularly scheduled instructional classes and library fees.</p> <p>States that the regulation shall not be construed to prohibit the school board from making supplies, services or materials</p>	<p><u>Changes related to policy:</u></p> <p>Local school boards that charge fees would have to have a policy and a fee schedule that would be provided to parents annually and posted on the school division's Web site. Rationale: to ensure that all parents are aware of the fee schedule.</p> <p>The policy would include a provision to waive or reduce fees for economically disadvantaged students and students whose families are undergoing economic hardships. Rationale: to ensure that students would not be denied opportunities based on their inability to pay the imposed fees.</p> <p>The policy and fee schedule would have to be consistent across the school division. Rationale: to ensure that parents are not required to pay different fees depending on which school the student attends.</p> <p>No fees could be charged that had not been approved by the local school board. Rationale: to ensure that schools do not charge fees without the knowledge and</p>

		<p>available to pupils at cost or to charge for field trips or educationally related programs that are not required activities.</p> <p>Permits the charging of deposits and when return of the item results in the refund of the deposit.</p> <p>States that the regulation does not cover operations of school stores or other fund raising activities.</p>	<p>approval of the local school board.</p> <p><u>Changes related to fees and charges:</u></p> <p>Fees may not be charged as a condition of school enrollment unless the student is not of school age or does not live within the jurisdiction. (§§ 2.1-1, 22.1-3, and 22.1-5 of the <i>Code of Virginia</i>) Rationale: to ensure that enrollment fees are charged in compliance with state law.</p> <p>Fees may not be charged for textbooks or textbook deposits; however, § 22.1-143 of the <i>Code of Virginia</i>, permits local school divisions to assess a reasonable fee for lost or damaged textbooks. Rationale: To ensure that students are provided textbooks at no cost as required by the Article VIII, § 3 of the Constitution of Virginia.</p> <p>Fees may not be charged for pupil transportation to and from school (Attorney General's Opinion, dated August 29, 2007), but may be charged for the student's pro rata share of the cost of providing transportation for voluntary extracurricular activities (§ 22.1-176 of the <i>Code of Virginia</i>.) Rationale: to ensure compliance with state law and the opinion of the Attorney General.</p> <p>Fees may be charged for summer school unless the summer school program is a remediation program required by the Standards of Quality (§ 22.1-253.13:1 of the <i>Code of Virginia</i>.) Rationale: to ensure that students are not charged fees for required remediation programs in contradiction of the Standards of Quality.</p> <p>Fees may be charged for class dues. However, they shall not be mandatory and the school board must specify the kinds of programs and activities funded by class dues. Rationale: in response to questions that the department has received from time to time from the public, including parents of public school children.</p> <p>Fees may be charged for nonmandatory services, such as parking and locker rental (Attorney General's Opinions dated January 12, 1982 and November 8, 1991. Rationale: to ensure compliance with the Attorney General's Opinions.</p>
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			<p>Fees may be charged for consumable materials, such as workbooks, but the local school board must have a policy to ensure that they are furnished at a reduced price or fee of charge to students who are unable to afford them (§ 22.1-243, <i>Code of Virginia</i>.) Rationale: to ensure compliance with state law.</p> <p>Fees may be charged for the behind the wheel portion of the driver’s education program (§ 22.1-205, <i>Code of Virginia</i>.) Rationale: to ensure compliance with state law.</p> <p>Fees may be charged for the preparation and distribution of official paper copies of the student’s transcript, provided that the school board first provides a reasonable number of free copies. Official electronic copies of transcripts shall be provided at no cost. Rationale: to ensure that student’s receive an appropriate number of transcripts for college and scholarship applications for free, without placing a financial burden on local school divisions for requests for inordinate numbers of transcripts.</p> <p>Local school boards shall not withhold a student’s report card or diploma because of nonpayment of fees and charges (§ 22.1-6 of the <i>Code of Virginia</i>) or suspend or expel a student for nonpayment of fees and charges. Rationale: to ensure compliance with state law and to prevent extreme disciplinary measures against a student if a parent does not pay a fee.</p> <p>Provides that the regulations do not address the operation of school stores or fund raising activities where transactions are strictly voluntary. Rationale: changed from current regulation to clarify that the regulations do not address <u>voluntary</u> activities regarding school stores or fund raising activities.</p>
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